

November 20, 2018

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Confidentiality Request for Certain Information Provided as Part of Liberty Cablevision of Puerto Rico, LLC's *Ex Parte* Notice in WC Docket Nos. 18-143, 10-90, 14-58

Dear Ms. Dortch:

Pursuant to Sections 0.457 and 0.459 of the Commission's rules, Liberty Cablevision of Puerto Rico, LLC ("Liberty") hereby requests confidential treatment of certain confidential business information contained in documents being filed today as part of Liberty's *ex parte* notice. Specifically, Liberty requests that the presentation marked "**CONFIDENTIAL—NOT FOR PUBLIC INSPECTION**" in the notice be withheld from routine public inspection, as it contains sensitive business information including granular details regarding Liberty's network design, deployment and sources of revenue ("confidential information"). Liberty has never made this confidential information public.

Section 0.457(d) of the Commission's rules provides that this information is automatically protected under the Commission's confidentiality procedures because it contains trade secret information. Section 0.457 of the Commission's rules also requires that the Commission treat as confidential documents that contain "trade secrets and commercial or financial information . . . not routinely available for public inspection."

As you are aware, these Commission regulations implement and incorporate exemptions from the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905. *See* 47 C.F.R. § 0.457(d). Under these exemptions, information is exempt from public disclosure if it is (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential in nature. 5 U.S.C. § 552(b)(4). The information being provided by Liberty is exempt from public disclosure under the aforementioned

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<sup>1</sup> 47 C.F.R. § 0.459(a) ("If the materials are specifically listed in § 0.457, such a request is unnecessary.")

exemptions and the FCC's regulations because it constitutes commercial and financial information, obtained from a person, which is confidential in nature.<sup>2</sup>

Similarly, Section 1905 of Title 18 of the United States Code makes it unlawful for federal government agencies or employees to disclose information relating to 'the trade secrets, processes, operations, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm partnership, corporation, or association....' Information that is exempt from release under Exemption 4 of the FOIA is prohibited from being disclosed, under 18 U.S.C. § 1905, unless disclosure is "authorized by law" by another statute other than FOIA.<sup>3</sup> Because no other statute authorizes the release of the information at issue here, disclosure of the Documents is prohibited by the criminal provisions of 18 U.S.C. § 1905.<sup>4</sup>

Nevertheless, out of an abundance of caution, Liberty is also making a showing that the information would also qualify for protection pursuant to Commission rule 0.459.<sup>5</sup> As required in rule 0.459, Liberty is providing below a statement of the reasons for withholding the information marked confidential, as well as a statement of facts underlying the information. If upon review of this request, the Wireline Competition Bureau or any other Bureau or Office of the Commission, or the Commission itself, decides not to grant this request, Liberty requests that all Commission staff refrain from reviewing the enclosed materials and immediately contact the undersigned counsel who will retrieve the confidential materials as soon as possible.

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<sup>2</sup> Under Exemption 4 of the FOIA, the terms "commercial" and "financial" are to be given their "ordinary meaning," and thus include information in which a submitter has a "commercial interest" *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *accord, Washington Research Project, Inc. v. HEW*, 504 F.2d 238, 244 n.6 (D.C. Cir. 1974), *cert denied*, 421 U.S. 963 (1975). "Commercial interest" has been interpreted broadly to include anything "pertaining or relating to or dealing with commerce." *American Airlines, Inc. v. National Mediation Bd.*, 588 F.2d 863, 870 (2d Cir. 1978). The term "person," for FOIA purposes, includes entities such as BHN. *See, e.g., Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 830 F.2d 871 n.15 (D.C. Cir. 1987) ("For FOIA purposes a person may be a partnership, corporation, association, or public or private organization other than an agency.").

<sup>3</sup> *See Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) (Exemption 4 and 18 U.S.C. § 1905 are "coextensive" and § 1905 prohibits the disclosure of confidential business information unless release is authorized by a federal statute other than FOIA); *see also* 47 C.F.R. § 0.457(d).

<sup>4</sup> *See CAN Fin. Corp. v. Donovan*, 830 F.2d 1132, 1151 (D.C. Cir. 1987).

<sup>5</sup> 47 C.F.R. § 0.459.

**(1) Identification of the specific information for which confidential treatment is sought;**

Liberty seeks to withhold from public inspection and otherwise seeks confidential treatment of the confidential information.

**(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;**

Liberty is providing this confidential information to the Commission to support its discussion with Commission staff regarding the structure of Phase 2 of the new Uniendo a Puerto Rico fund announced in WC Docket 18-143.

**(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged;**

Liberty does not publicly disclose its sensitive business such as the status and project-planning details of its network deployments, and takes particular caution to ensure that such information is not disclosed to competitors. Disclosure of the confidential information would put Liberty at a disadvantage in negotiating with potential customers and business associates, would damage its standing in the industry.

**(4) Explanation of the degree to which the information concerns a service that is subject to competition;**

The market of providing telecommunications services is highly competitive, particularly in Puerto Rico.

**(5) Explanation of how disclosure of the information could result in substantial competitive harm;**

Disclosure of the confidential information would give competitors an unfair advantage by providing them with sensitive information that they could use to unfairly compete with Liberty.

**(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure;**

Liberty has consistently sought to keep the confidential information from being publicly disclosed, and has only shared this information with its attorneys and any other consultants on a need-to-know basis.

**(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties;**

This information has never been made available to or otherwise disclosed to the public except to attorneys and similar advisors on a need-to-know basis.

**(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure; and**

Liberty does not foresee a determinable date or timeframe after which it will no longer consider this information highly confidential, commercially-sensitive trade secret information.

**(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.**

The foregoing establishes that this confidential information is subject to confidential treatment pursuant to the FCC's rules at 47 C.F.R. sec. 0.457, 0.459, and 18 U.S.C. sec. 1905, and that it contains information containing trade secrets, and commercial and financial information in a company- specific manner that has not been previously made public, and that is otherwise prohibited from being publicly disclosed.

Respectfully submitted,



Danielle Frappier  
*Counsel to Liberty Cablevision of Puerto Rico, LLC*

November 20, 2018

**VIA ECFS (PUBLIC VERSION)**  
**HAND DELIVERY (CONFIDENTIAL VERSION)**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Notice of *Ex Parte* Communication**  
**WC Docket Nos. 18-143, 10-90, 14-58**

Dear Secretary Dortch:

On November 16, 2018, Naji Khoury, Chief Executive Officer of Liberty Cablevision of Puerto Rico, LLC (“Liberty”), John Winter, Senior Vice President and Chief Legal Officer of Liberty Latin America Ltd., John F. Conrad Vice President – Legal of Liberty Latin America Ltd., Christopher Cook, and the undersigned, of Davis Wright Tremaine LLP, and Tom Bardo of Nelson Mullins Riley & Scarborough LLP, met with following Commission staff:

- Chairman Ajit Pai, Michael Carowitz, and Zenji Nakazawa of Chairman Pai’s Office;
- Arielle Roth of Commissioner O’Rielly’s Office;
- Travis Litman of Commissioner Rosenworcel’s Office; and
- Sue McNeil, Alexander Minard, Rebekah Douglas, and Talmage Cox of the Wireline Competition Bureau.

In the meetings, Liberty thanked the Commission for establishing the Uniendo a Puerto Rico Fund, and for the focus the Commission has placed on Puerto Rico in wake of the destruction caused by 2017 Hurricanes Irma and Maria. Liberty discussed the attached PowerPoint presentation, which explains in part how Liberty has utilized the Uniendo a Puerto Rico Stage 1 funding it received to restore and deploy critical broadband services to locations throughout Puerto Rico.

In addition, Liberty discussed its recommendations and proposals for Stage 2 of the Uniendo a Puerto Rico Fund, which are described in the attached PowerPoint presentation. In particular, Liberty expressed support for allocating the majority of Stage 2 funding for new deployment through a competitive bidding process at the census block group level. Liberty also

discussed the need for the Commission to drastically lower the high-cost funding benchmark for Stage 2 Uniendo a Puerto Rico funding due to the unique circumstances involved in deploying broadband throughout Puerto Rico. However, Liberty also expressed its willingness to work with the Commission to explore additional ways to allocate Stage 2 support in the most efficient manner possible.

Portions of the attached PowerPoint presentation contain confidential and commercially sensitive information. Therefore, pursuant to Sections 0.457 and 0.459 of the Commission's rules, Liberty has included a Request for Confidential Treatment along with this *ex parte* notice. In accordance with the Commission's rules, Liberty respectfully requests that unredacted copies of this *ex parte* notice not be made publicly available. A redacted version of the *ex parte* notice is being filed electronically via ECFS in the above referenced dockets.

Respectfully submitted,



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*Counsel to Liberty Cablevision of Puerto Rico, LLC*

cc: Chairman Ajit Pai  
Michael Carowitz  
Zenji Nakazawa  
Arielle Roth  
Travis Litman  
Sue McNeil  
Alexander Minard  
Rebekah Douglas  
Talmage Cox



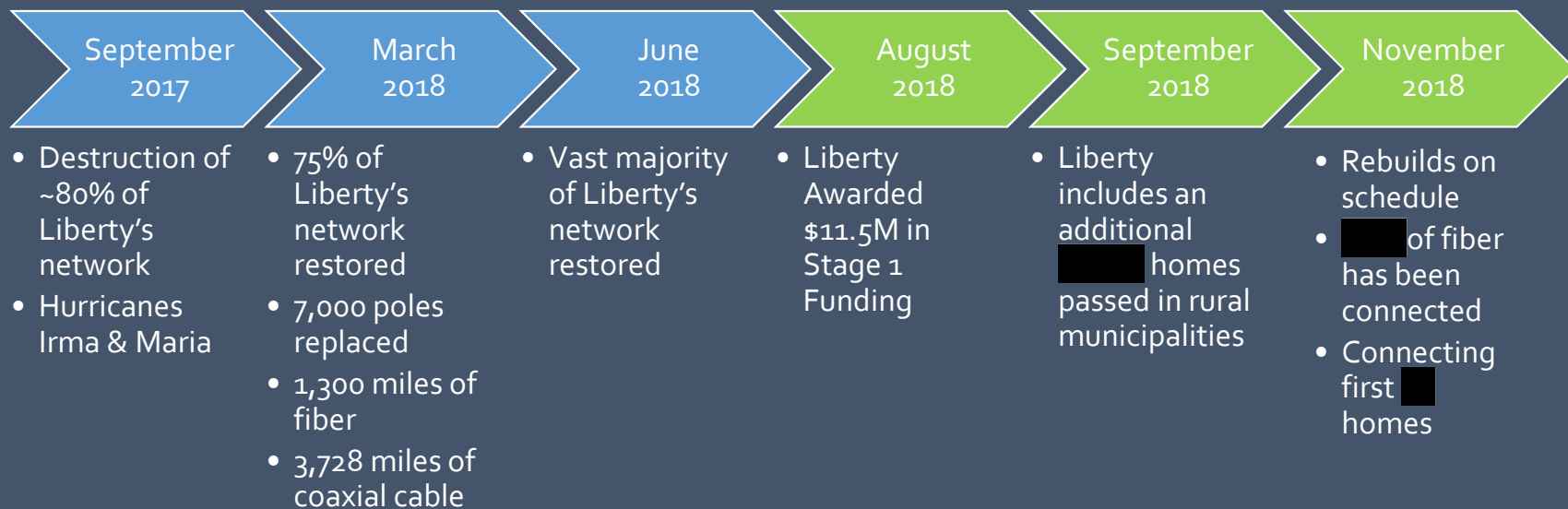
# LIBERTY CABLEVISION OF PUERTO RICO

Uniendo a Puerto Rico Fund

# LIBERTY'S RESTORATION EFFORTS IN PUERTO RICO

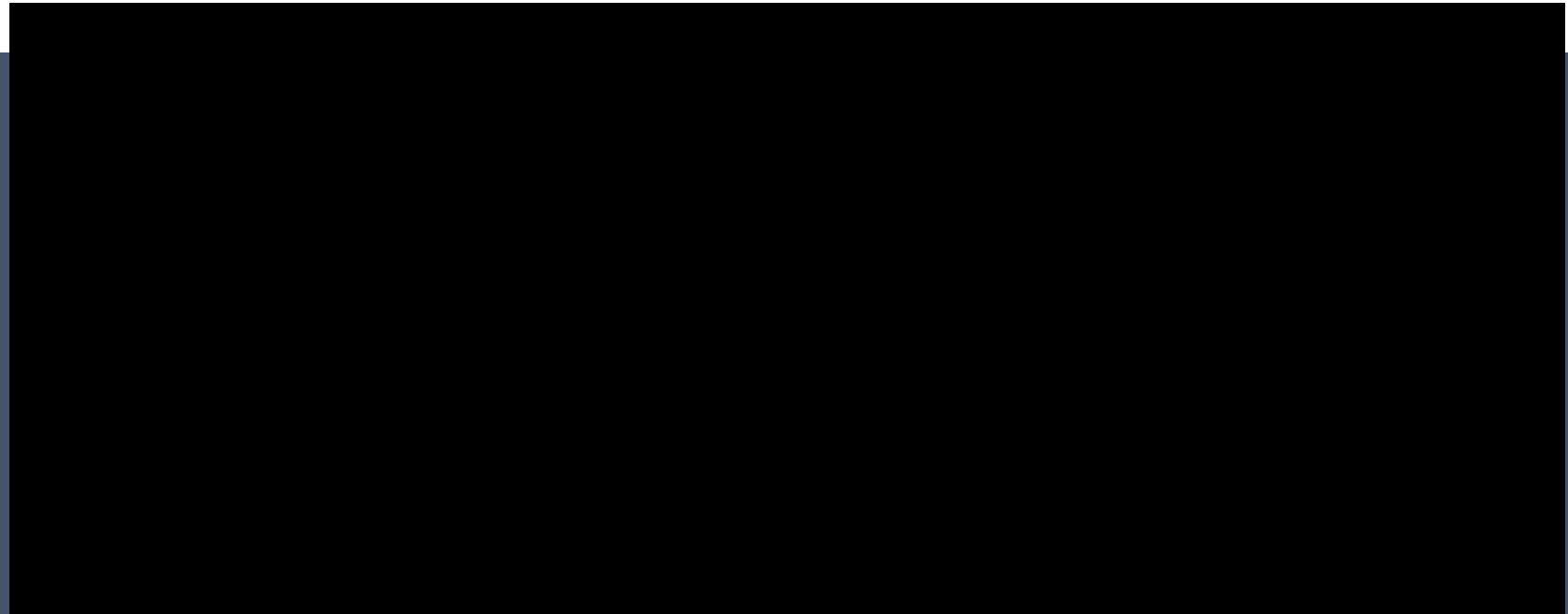
\$142M in Liberty's Own Capital

Example of Rebuild Using Stage 1 Funding





## • ADDITIONAL REBUILD USING STAGE 1 FUNDING



- Targeted construction in primarily rural areas heavily impacted by the hurricane (SE to NW corridor).





# LIBERTY'S STAGE 2 PROPOSAL

## 70% for New Builds

- Target funding to unserved or underserved locations.
- Use census block groups to focus on unserved/underserved locations.
- Allocate sufficient funds per location.
- Pre-hurricane financials reflect:
  - ~29% take rate
    - ~\$50 ARPU
    - Which leads to ~\$14 high-cost funding threshold.
- Use competitive bidding process to maximize quality of service provided and number of homes served.

## 30% for Hardening

- Utilize per mile or comparable quantitative approach for funding.
- Encourage cooperation with other providers where feasible to leverage resources.
- Initially focus hardening in areas with homes-passed density.

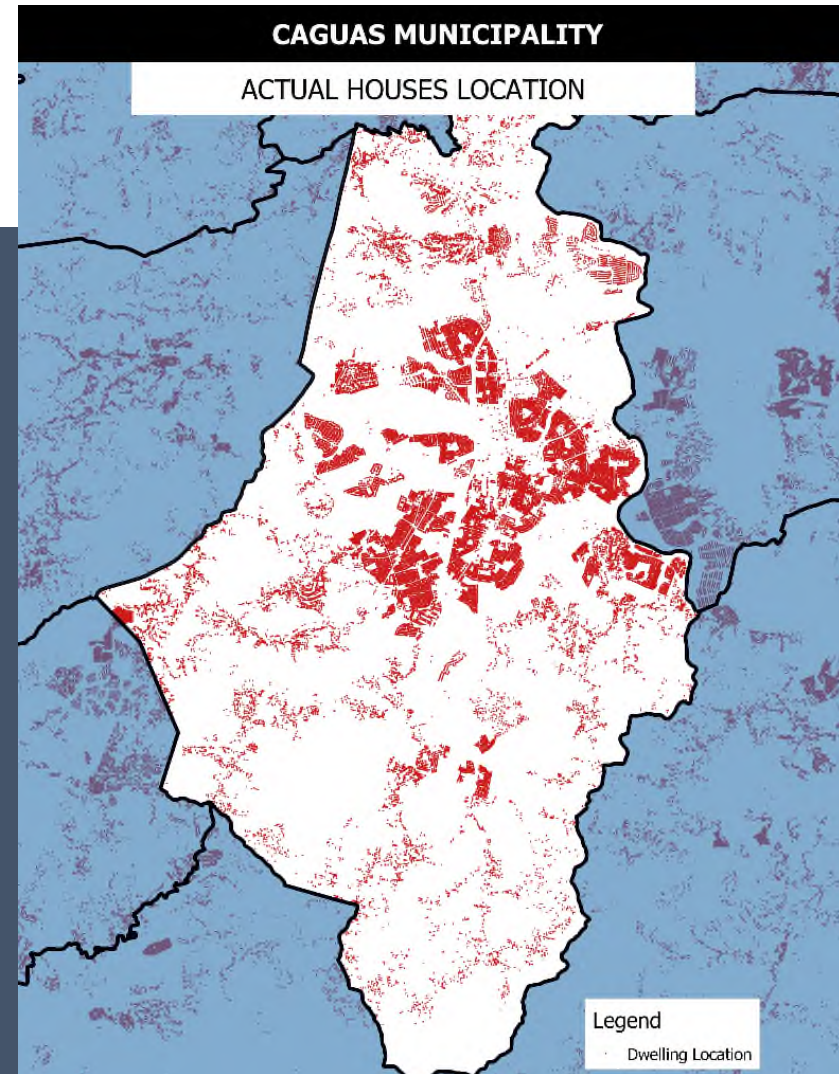
## CENSUS BLOCK GROUPS FOR COMPETITIVE BIDDING

- Significant advantages over municipalities because they are more uniform in key characteristics:
  - Urban vs. rural
  - Served vs. unserved
  - Presence of subsidized entity
- Municipalities often have a mix of densely populated and rural areas, increasing not only the difficulty of focusing support on the specific areas where it is most needed, but also the likelihood of waste.
- Census block groups may be combined for bidding to achieve efficiencies.
- Commission used census block groups for CAF program.

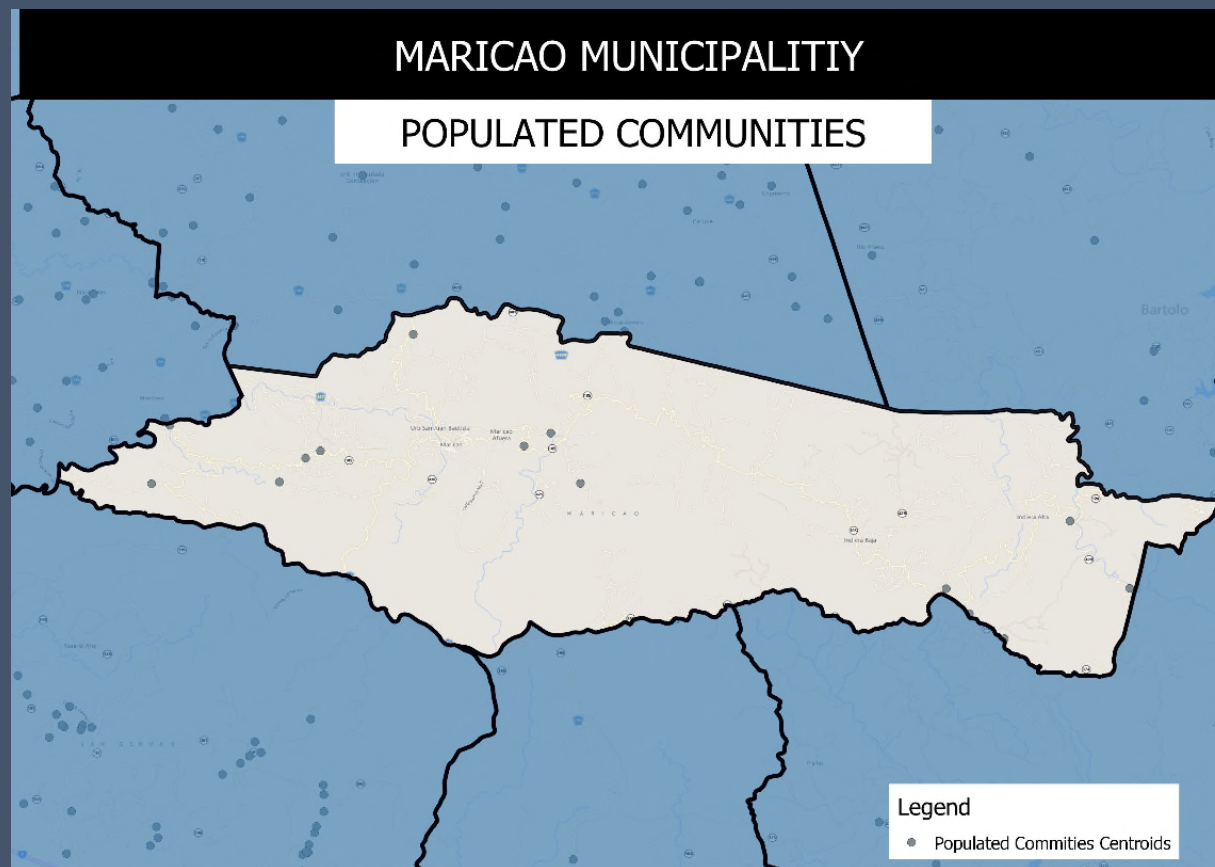
# CAGUAS MUNICIPALITY

## EXAMPLE OF URBAN/RURAL MIX

- Using smaller census block groups enables targeted funding and bidding for unserved/underserved homes.
- Number of census block groups is manageable and census block groups may be combined where appropriate.



# POPULATION CENTERS MAY BE SPREAD OUT



## COMPETITIVE BIDDING -- A FAR SUPERIOR APPROACH

- Competitive bidding can achieve higher quality for lower unit cost more quickly.
- The Commission can maximize flexibility and accountability through its competitive bidding criteria.
- Right of first refusal simply maintains and funds the inefficiencies of the incumbent.
- If the incumbent is the better alternative for specific census group blocks, it will present a superior competitive bid.

# KEY COMPETITIVE BIDDING CRITERIA

1. Price per location
  - Most heavily weighted criterion
2. Quality of service, i.e., network performance
3. Speed of deployment
  - Efficiency of deployment should be considered
  - Build out keystones and timelines should be required in bids
4. Resiliency
  - Difficult to achieve in low density build areas at realistic cost



# QUALITY OF SERVICE CRITERION

- The Commission should include quality of service requirements and credit bids proposing superior quality standards.
- Liberty's network will meet the following performance standards.

Performance Tier	Speed	Usage Allowance	Weight
Baseline	$\geq 25/3$ Mbps	$\geq 150$ GB or U.S. median, whichever is higher	50
Above Baseline	$\geq 100/10$ Mbps	$\geq 250$ GB	0

Latency	Requirement	Weight
Low Latency	$\leq 100$ ms	0
High Latency	$\leq 750$ ms & MOS of $\geq 4$	25

# HARDENING/RESILIENCY

Multiple alternatives for improving network resiliency:

- Bury infrastructure
- Improve reliability of power source
- Establish additional undersea cable landing—currently all landing sites are concentrated in 6km area

# PRTC PROPOSAL VS. LIBERTY

